

**MINUTES
of the
SIXTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**November 5-7, 2007
Pueblo of Taos, New Mexico
Pueblo of Pojoaque, New Mexico
Santa Fe, New Mexico**

The sixth meeting of the Indian Affairs Committee (IAC) for the 2007 interim was called to order by Senator John Pinto, co-chair, at 10:30 a.m. in the auditorium at the Pueblo of Taos community center. Senator Pinto asked that Representative Roberto "Bobby" J. Gonzales chair the meeting. Representative Gonzales requested a moment of silence for Representative Manuel G. Herrera, who had recently passed away.

Present

Rep. James Roger Madalena, Co-chair
Sen. John Pinto, Co-chair
Sen. Rod Adair (11/5, 11/6)
Rep. Ray Begaye (11/7)
Sen. Dianna J. Duran
Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Rep. John Pena
Sen. Lidio G. Rainaldi (11/6, 11/7)
Sen. Nancy Rodriguez (11/6, 11/7)
Rep. Gloria C. Vaughn

Advisory Members

Sen. Ben D. Altamirano (11/7)
Rep. Ben Lujan
Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar

Other Legislators in Attendance

Rep. Roberto "Bobby" J. Gonzales (11/5)

Absent

Rep. Justine Fox-Young
Sen. John C. Ryan
Rep. W. C. "Dub" Williams

Sen. Joseph J. Carraro
Sen. William E. Sharer
Sen. David Ulibarri

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Chase Van Gorder
Jennie Lusk
Larry Matlock

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Monday, November 5 — Pueblo of Taos

Pueblo of Taos — Status Update

After an invocation by Henry Lujan, the committee members were welcomed by Kelvin Mondragon, who apologized for the absence of Governor Suazo, who was in Washington, D.C., and of other tribal officials who were attending a funeral. Mr. Mondragon introduced the tribal directors and the assistant tribal administrator and distributed a handout, "Taos Pueblo: A Homeland, Cultural Stronghold and World Heritage Site". Mr. Mondragon reviewed a number of issues on behalf of Governor Suazo. Uranium mining is opposed because of the danger to an aquifer that provides drinking water for 15,000 people. Hundreds of abandoned uranium mines have not been cleaned up, a situation that cannot be allowed to happen again. The proposed Desert Rock power plant between Farmington and Shiprock is opposed because it will pollute the wilderness areas, as well as the area's drinking water. Sulphur and nitrogen have caused a marked decline in visibility and air quality. Although Sithe Global has promised to lower some emissions, it has not promised any dramatic decrease in the plant's output of carbon dioxide, a greenhouse gas responsible for global warming. The cleanup and transfer of Fort Wingate has the pueblo's support because of the valuable role the land can play for the people of the Pueblo of Zuni and the Navajo Nation. He also expressed support for the food gap task force and the Native American arts task force that had been requested by memorials during the 2007 legislative session.

Mr. Mondragon was joined by acting tribal administrator Rosanne Bernal to discuss the pueblo's capital outlay priorities. Its first priority is the repair of the community drainage system. The centuries-old traditional system was severely damaged in 2003, 2005 and 2006. Because of water-sharing agreements, the pueblo cannot meet its goal of bringing 3,000 acres of its historically irrigated acreage back into production by 2015. In addition, the pueblo seeks the support of the IAC for the adoption of a draft of a water settlement bill that will be introduced in 2008. Director Reba Suazo presented the pueblo's second capital outlay priority. The pueblo currently has 100 miles of dirt roads and needs road maintenance equipment. She noted that the Indian Health Service (IHS) clinic had seen an increase in respiratory diseases among youth and elders due to dust from roads that need to be compacted. The need for road maintenance is greatest along school bus routes. The third priority is a new judicial complex, which would house tribal courts and law enforcement and detention facilities. Currently, the tribal court is five miles away from the police department, and the detention facility is only sufficient to hold a suspect for a maximum of 72 hours. Prisoners have been sent to the Taos County facility, but

when that is full, some are sent to Ignacio, Colorado, if there is room available there. The University of New Mexico (UNM) Law Center will help to plan the personnel and services housed in the new complex. The tribe's fourth priority is a new visitors' center to welcome properly those that come to see a UNESCO world heritage site and national historic landmark, which has been continuously inhabited for over 1,000 years. The tribe closes the pueblo during tribal ceremonies like the funeral held this morning. The entrance is also closed to nontribal members for 10 weeks from late winter to early spring. A visitors' center located just outside the entrance could remain open when ceremonies are held or during other times when the pueblo is closed to the public. Justin Foster, division director for natural resources, introduced another request for the purchase of two type 6 wildland firefighting engines, which cost \$80,000 each.

Lillian Romero, director for the senior citizens center, was joined by Ray Espinoza to ask for funds for a new facility. The current center has insufficient space, which means that many seniors receive home delivery of their meals, depriving them of the opportunity to socialize. The floor has buckled and the kitchen needs renovation. Construction will cost \$1.2 million, of which \$300,000 is currently available. Mr. Espinoza noted that the majority of players in casinos are elderly; for this reason, profits from casinos should be used to build senior citizens centers. Lieutenant Governor Frederick Lujan, Sr., explained that the income from the pueblo's very small casino was already dedicated.

Ms. Nakai, division director for health and community services, gave the committee a binder of information for later review. She said that the federal budget cuts to the IHS will affect many of her clients, because for many of them it is their only health care provider. She also mentioned that the diabetes program would expire in 2008 without new funding and asked for the committee's support.

Mental Health for Native American Adolescents

Howard Spiegelman, executive director of the New Mexico Alliance for School-Based Health Care, and Regina Begaye Roanhorse, project manager for the Kellogg Policy Program for Youth, gave a PowerPoint presentation and showed a video made by students at the Pueblo of Laguna. Mr. Spiegelman listed several challenges facing Native Americans who need mental health care. IHS facilities have a waiting period between two and six months. Parents have to leave work to take their children out of school to go to a clinic. Because providers are constantly rotating every year or two, there is a lack of trust among the patients. Transportation in rural areas is a difficulty. Native American communities are often very small, and the lack of privacy in clinics deter many patients from seeking treatment, knowing their neighbors will gossip about them. The solution to many of these problems lies in school-based health clinics. Out of 85 school-based health clinics around the state, 31 serve Native American students. The video presentation showed actual students working in a teen center to identify and help other students who might be considering suicide. This peer-to-peer program has been successful. One statistic included in the video is that the suicide rate for young Native Americans is three times that of white youth, which affects how well they perform in school.

Subprime Mortgage Lending

William J. Verant, director of the Financial Institutions Division of the Regulation and Licensing Department, presented the current issues regarding payday loans and subprime mortgage lending. Representative Lundstrom joined him at the presenters' table. Mr. Verant listed the top five examination findings regarding subprime mortgage lending: mortgage fraud against investors/lenders, unregistered loan originators, kickback fees and fee splitting, undisclosed fees and consumers' unfamiliarity with documents, terms and paperwork. Mr. Verant said that the most common tactic to qualify consumers for home loans was outright mortgage fraud, substituting "stated income" for the actual income. He also gave details of some of the predatory lending practices that exist, including offering a higher interest rate when the client qualifies for a lower rate, or charging a fee for "finding" a loan for a well-qualified but financially ignorant client who could simply get that loan from a local bank. Another predatory practice that loan brokers use is to write a loan so that the payment does not include interest, taxes and insurance on the property. The uninformed think their taxes are being paid. When the taxes and insurance come due, they cannot pay and are in jeopardy of losing the home, or their house burns down and they find out they do not have insurance. Most of these clients are too poor to hire lawyers and cannot pursue legal remedies. The proposed loan brokers act focuses on brokers and loan originators, but it does not provide specific remedies to consumers who have financial products they cannot afford. Representative Lundstrom explained that legislation would be submitted for the committee's endorsement on November 7, 2007.

Minutes

Upon a motion by Representative Rodella, seconded by Representative Vaughn, the committee approved without objection the minutes from the October 2007 meeting of the IAC.

Revenue Sharing for Non-Gaming Tribes

Governor Craig Quanchello of the Pueblo of Picuris thanked the legislators for the capital outlay funds used to renovate the tribal administration buildings and to purchase a road grader, fire truck and other equipment. Governor Quanchello explained that his community is in a remote area that cannot attract gaming resources. Without the pueblo's enterprise programs, many basic services like routine health care, road maintenance, sanitary projects and internet access would be lacking. Because of the lack of services, many people are forced to move to other areas of the state. Many youth move because they do not think they can be successful on the land where they were raised. Once they leave, it is hard for them to return. Governor Quanchello requested general fund resources to be earmarked for non-gaming tribal communities. An increase in capital outlay for Native Americans in rural communities would also be helpful. He asked for an increase in the amount of emergency funding available for the New Mexico Finance Authority. He explained that the Pueblo of Picuris is unique in that there are 3,000 nontribal homes on tribal land, including the communities of Penasco, Huerito and Chavazar. The governor asked the committee to encourage the economic development and tourism departments to create more opportunities for non-gaming communities.

Representative Madalena told the governor that if the pueblo would invite the IAC to hold a meeting there, the committee would have no objections. Governor Quanchello told the committee members they would be welcome to hold a meeting there.

Following the presentation by Governor Quanchello, Representative Gonzales recessed the meeting at 3:24 p.m.

Tuesday, November 6 — Pueblo of Pojoaque

The sixth meeting of the IAC for the 2007 interim was called back into session by Senator Pinto, co-chair, on Tuesday, November 6, 2007, at 9:15 a.m. at the tribal offices of the Pueblo of Pojoaque.

Formal State Recognition of Native American Tribes

Deputy Secretary of Indian Affairs Teresa Gomez, general counsel for the Indian Affairs Department (IAD), Stephanie Kiger and Attorney General Gary King presented their report regarding formal state recognition of Indian tribes, which report was requested by Senate Joint Memorial 42 passed during the 2007 legislative session. Ms. Gomez recognized the contribution to the report by Nick Madison, a third-year law student at Harvard who had served as an intern at the IAD. The preliminary report lacks final conclusions and recommendations because the memorial asked only that the IAD and the Office of the Attorney General examine the impacts of formal state recognition. None of the tribes surveyed during the preparation of the report recommended that the state embark on any sort of formal recognition process. Currently, New Mexico does not formally recognize any tribes, although it does have government-to-government relations with them. Ms. Gomez noted that if the state considers formal recognition, the process would be very complex and would affect many tribes. Also, states that have recognized tribes focus their efforts on non-federally recognized tribes. Ms. Gomez covered the practices in other states that are included in the report. She questioned the need for formal recognition of any tribes, especially those that already have federal recognition. Attorney General King complimented the IAC, saying that committees are more effective now than when he was a state representative. He agreed with Ms. Gomez' conclusions and in view of the complex issues, his office does not recommend that the state develop a mechanism for recognition. Ms. Gomez noted that as far as she can see, there is nothing that precludes the federally recognized tribes from gaining access to benefits from the state. Attorney General King said there is very little to be gained by state recognition because the state already interacts with tribes on a government-to-government basis.

Diné College Diné Environmental Institute

Curtis Ray Benally, vice president for institutional advancement at Diné College, Marnie Carroll of the Diné College Environmental Institute and Annette Brown of Three Stars

Consulting addressed the committee regarding the proposed Diné College Diné Environmental Institute and the associated \$215,000 funding request. Mr. Benally explained that the environmental institute was culturally important to the Diné people because it is an aspect of *hozhou*, a philosophy that requires human life to be in harmony with the universe and the earth, based on the four sacred elements of earth, water, air and light. Ms. Carroll said that the initiative comes at a significant time because the United States is in the middle of a push for national energy independence. Increasing ozone levels, carbon dioxide emissions and carbon trading issues need to be considered by the tribes and states. Water resources are also declining in quality and quantity. Erosion issues and dust levels impact snowpack, which melts earlier each year. She predicted an accelerated migration from the reservation and out of state because of the lack of economic development opportunities, as well as the loss of plants and culturally significant species. This loss of agricultural viability and anticipated decline of the environment will increase health costs. She said that 47 Native American students had done research at Diné College, working with local communities, and she expects that number to increase with their partnership with New Mexico State University, UNM and New Mexico Tech.

Transportation Technical Committee — House Memorial 35 Report

Robert Ortiz, deputy secretary of transportation for operations, and Representative Lundstrom presented the committee with copies of the Transportation Technical Committee's final report as required by House Memorial 35, as well as a letter from Secretary of Transportation Rhonda Faught about the U.S. Highway 491 project and a separate report entitled, "House Memorial 35: Sustainable Funding Strategies". The report shows that, because of decreasing federal revenue streams and the increase in the cost of materials, the current funding will not sustain New Mexico's needs. More funding will be required at the state and federal levels. Mr. Ortiz pointed out that not keeping up with authorized spending levels would put the Highway Trust Fund "in the red" by \$4.3 billion by 2009. The decline in federal dollars could be between \$100 million and \$150 million. It was reported that truck traffic is doing significant damage to the state's highways. A tractor-trailer rig carrying a legal load of 86,000 pounds does as much damage as 38,000 passenger cars. Mr. Ortiz expects a traffic growth rate of 81% in 21 years. He then explained the dramatic increase in the cost of materials that has caused many cost overruns in the department's projects. He noted that some neighboring states are experiencing 80% increases in the cost of construction. The cost of asphalt has gone up 92%. The Department of Transportation has managed to keep some costs down by reducing the thickness of pavement used on the shoulders of many roads. The use of design options has put the department in the top five nationwide for efficient use of resources. Mr. Ortiz' handout has a chart showing the cost of gas in each state, along with the gasoline tax charged by each state. There is no correlation between high gasoline prices and high gasoline taxes. New Jersey has the third lowest tax and New York has the third highest, yet their prices are almost exactly the same. He explained that in New Mexico, 76% of the money collected from the 17 cents-per-gallon road tax goes into the State Road Fund and 24% goes into the Local Government Fund. In order to plug the hole left by diminishing federal funds, he recommended dedicating the road excise tax to the State Road Fund, as well as initiating a registration surcharge based on the weight of the vehicle being registered. Also, the department wants to dedicate the gross receipts

taxes on state highway projects to go into the State Road Fund instead of the general fund, which would generate \$14 million.

Recap of Indian Education Act Implementation

Nancy Martine-Alonzo, assistant secretary for Indian education, reviewed three documents: one comparing 2007 amendments to the Indian Education Act, a fact sheet on education programs being funded through initiatives of the Public Education Department (PED) and draft minutes of the most recent government-to-government meeting mandated by the 2007 amendments. Ms. Martine-Alonzo reported that the 2007 amendments broadened the responsibility for Indian education programming to include preschool through age 20, as opposed to K-12 and noted that the PED has been communicating with the Higher Education Department (HED) and will provide representation on the New Mexico Tribal Higher Education Commission. She also noted that funds for expansion of some areas was diverted when the rural education initiative, matched by private funds through Save the Children, was adopted. The urban Indian representatives have become active with the Indian Education Advisory Council, a move that will increase representation of tribal members who are not based on a reservation. Ben Atencio was elected chair of the Indian Education Advisory Council and Kevin Shendo is vice chair. The department is coordinating with bilingual programs.

Indian Water Rights Settlements — Status Update

Estevan Lopez from the Interstate Stream Commission and John D'Antonio, state engineer, were joined by Myron Armijo, Indian affairs liaison, and Bill Hume from the office of Governor Richardson, as well as Gregory C. Ridgley, deputy chief counsel for the Office of the State Engineer. Mr. D'Antonio explained that he is required to report by November 15 of each year to the IAC and the Legislative Finance Committee on three subjects: settlements, distribution of funds and recommendations for appropriations to fund necessary projects. He presented the committee with a handout entitled "2007 Indian Water Rights Settlement Fund Report" and a handout entitled "Funding Proposal for Yellowman Siphon Phase III Rehabilitation Project". He noted that the United States has not signed any of the three settlement agreements, and that will not change until Congress has passed specific settlement legislation. The Navajo Nation settlement on April 19, 2005 would use the waters in the San Juan River Basin to form a Navajo-Gallup water supply project to bring water to Navajo and non-Indian communities in northwest New Mexico.

Federal legislation has been introduced by members of the New Mexico delegation. Mr. D'Antonio testified in Washington, D.C., on that legislation before the House Subcommittee on Water, Power and Natural Resources. It was conducted by the chair of the Interstate Stream Commission. The hydrologic determination of the Upper Colorado River Commission showed that there was sufficient water in the basin to allow the settlement to go forward. Mr. Hume confirmed that Governor Richardson is ready to support the settlement. Mr. D'Antonio added that his office had put in a capital outlay request for \$15 million, based on the \$25 million he asked for last year, of which he received \$10 million.

Pueblo of Pojoaque — Status Update

Committee members were welcomed by Lieutenant Governor Linda Diaz. She presented the members with a list of their capital outlay projects that still require funding, including a ceremonial facility, a wellness center, a boys' and girls' club, a daycare project, the Poeh Cultural Center/Museum, a water and wastewater treatment system, the SOLAREC renewable energy project and a senior citizens center.

Following the Pueblo of Pojoaque status update, Representative Madalena recessed the meeting at 4:55 p.m.

Wednesday, November 7 — Room 322, State Capitol

The sixth meeting of the IAC for the 2007 interim was called back into session by Senator Pinto, co-chair, on Wednesday, November 7, 2007, at 9:20 a.m. in Room 322 at the State Capitol. Gil Vigil, former governor of the Pueblo of Tesuque, gave an invocation.

Higher Education Department — Status Update

Dr. Reed Dasenbrock, secretary-designate of higher education, gave a PowerPoint presentation on American Indian students in higher education and the Indian Education Act. The principal goal for American Indian students is equity in educational attainment and achievements. Dr. Dasenbrock stated that American Indian students should enter and graduate from higher education proportionate to their percentage in the New Mexico population as a whole. He reviewed enrollment progress to date: American Indian students are about nine percent of enrollment compared with a 10% proportion of the entire population. He believes the state is on track to achieve proportionality by the fall of 2009. The percentage of American Indian students actually graduating is not as positive, however, being roughly 40% of what they should be at the bachelor's, graduate and professional degree levels. This is partly due to the fact that American Indian enrollment is focused in the two-year sector, where graduation rates are proportionate. The higher education community must work on increasing the transfer rate from two-year to four-year institutions and on retention and graduation rates at four-year institutions. One question raised by Dr. Dasenbrock is whether the four tribal colleges in New Mexico are considered a part of the state's higher education. The legislature needs to provide guidance in this area. In regard to the Indian Education Act, the act is silent regarding the role of the HED. Speaker Lujan moved that the secretary of higher education and the IAD coordinate to form a policy regarding the role of the HED in implementing the Indian Education Act. Representative Vaughn seconded the motion, which passed without objection.

Indian Affairs Department — Status Update

Secretary of Indian Affairs Benny Shendo, Jr., briefed the committee on the activities of the department. The task force on cultural competence education requirements in certain health education programs has been formed and should issue a report before the 2008 legislative session. The department is working to implement the Reburial Grounds Act passed during the 2007 legislative session (Chapters 299 and 300) and public hearings should be conducted in the spring of 2008. The study of Native American domestic violence against women requested by House Memorial 94 during the 2007 legislative session could not be carried out due to the lack

of data. The deadline for submission of applications for Native American behavioral health services is December 14. Work is being done on revising the proposed Native American Health Care Improvement Act and a tribal consultation meeting was scheduled to be held on November 27. None of the other legislative initiatives submitted by the IAD to the governor were approved for the 2008 legislative session.

Rebecca Martinez, capital outlay manager for the IAD, briefed the committee on the status of capital outlay projects being administered by the department. In fiscal year 2007, the department closed 126 projects worth more than \$10 million. At the present time, the department is administering 649 projects worth a total of just over \$93 million. Of this amount, more than \$52 million has been encumbered with more than \$7 million having been disbursed. There are currently 98 (\$13.5 million) projects for which joint powers agreements have been approved and returned to tribal entities for execution. Seventy-nine projects (\$11.4 million) are delinquent in their scopes of work. Ninety-three projects will expire as of June 30, 2008 and legislators will get letters if those projects are within their districts. Ms. Martinez described ongoing efforts to streamline the approval process for projects located within the Navajo Nation. She also reviewed suggestions for reforming the process of reauthorizing capital outlay appropriations, a transition to grant agreements for some projects, participation in the infrastructure capital improvement planning process, tribal training and reversions.

Endorsement of Legislation

Mr. Van Gorder presented a folder of proposed legislation to be considered for endorsement by the committee (see attached sheet) and explained the process of prefilming and cosponsoring bills for the 2008 legislative session. Representative Lundstrom indicated she was withdrawing Item K as it was duplicative of Item S and moved approval of Items F through T. The motion was seconded by Senator Lovejoy and approved without objection. Senator Lovejoy moved approval of Item A. The motion was seconded by Representative Vaughn and approved without objection. Senator Pinto moved approval of Item B. The motion was seconded by Representative Lundstrom and approved without objection. Representative Lundstrom moved approval of Item C. The motion was seconded by Senator Lovejoy and approved, with Senator Rainaldi objecting. Representative Salazar requested that Item D be removed from the list of bills to be considered for endorsement. Item E regarding restrictions on uranium mining was discussed and Senator Lovejoy agreed to remove the restrictions related to aquifers. Senator Pinto moved approval of Item E as amended. The motion was seconded by Representative Pena and approved, with Senator Duran objecting. The committee also considered a bill to be proposed by Representative Lundstrom to impose a surtax on uranium mining to be used to clean up contaminated sites, and the Native American Health Care Improvement Act to be sponsored by Speaker Lujan. Committee members agreed to endorse these two bills in concept, but they requested that final drafts of the bills be circulated to voting members before deciding on an endorsement.

Adjournment

There being no further business before the committee, the sixth meeting of the IAC for the 2007 interim was adjourned at 12:55 p.m.

